

APPOINTMENT OF COUNSEL IN CRIMINAL CASES

Duty to Continue Representation

Under the Fourth Circuit's Plan in Implementation of the Criminal Justice Act, every attorney, including retained counsel, who represented a defendant in the district court must continue to represent the client after termination of those proceedings, unless relieved of further responsibility by the court of appeals. If there is a judgment of conviction or an order revoking probation, counsel must inform the defendant of his right to appeal and his right to have counsel appointed on appeal. If requested by the defendant, counsel must file a timely notice of appeal and take appropriate and timely steps to perfect the appeal. CJA Implementation Plan, Part V.1.

In most direct criminal appeals, counsel who represented the defendant in the district court is automatically appointed upon docketing of the appeal. Upon appointment by this court, counsel must complete the appeal and, if appellant so requests and there are grounds for seeking such review, file a petition for writ of certiorari in the Supreme Court. If counsel believes a petition for writ of certiorari would be frivolous, counsel may file a motion to withdraw in the court of appeals. The motion must reflect that counsel served the defendant with the motion and advised the defendant of his right to file a response within 7 days. CJA Implementation Plan, Part V.2; Local Rule 46(d).

Motions to Withdraw

An attorney who does not desire to continue the representation must file a motion to withdraw with the court of appeals promptly after filing the notice of appeal, with a copy served on the defendant as well as on opposing counsel. The court gives due consideration to counsel's request to withdraw from representation recognizing that while there are benefits to continuity of representation, the skills necessary to proceed as appellate counsel may differ from those required for trial counsel. CJA Implementation Plan, Part II.8. If counsel's motion is granted, withdrawing counsel must apprise successor counsel of all information relevant to the defendant's appeal.

Compensation and Reimbursement of Expenses

A \$7,100 limitation, exclusive of expenses, applies to the compensation payable to appointed counsel in this court. In appeals of post-trial motions, revocations of probation, or collateral proceedings, a \$2,100 limitation, exclusive of expenses, applies. Payment in excess of either limitation may be made to provide fair compensation in cases involving extended or complex representation, upon approval by the chief judge of the court of appeals.

CJA vouchers must be submitted within 60 days of final disposition of the case or, if a certiorari petition is prepared, within 60 days of disposition of the petition. The voucher must be supported by the attorney's time records, broken down according to the categories required by the voucher, and by detailed receipts for expenses. Counsel should use the worksheets provided by the clerk at the time of appointment.

Related Links

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